

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1381

B
PJS

To be argued by
Mark A. Varrichio

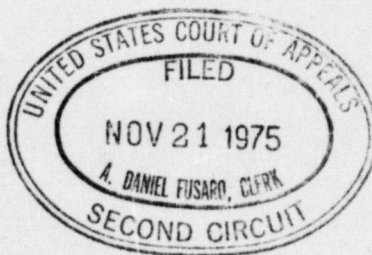
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

IN RE JOSEPH MILLOW;
A witness before the Grand Jury,
Witness-Appellant.

Criminal Action
Case No. M11-188

APPENDIX TO THE BRIEF,

MARK A. VARRICHIO
Attorney for
Witness-Appellant
3071 Westchester Avenue
Bronx, New York 10461
Tel. (212) 863-2897



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>PAGE</u>
Docket Entries.....	1
Order on Motion to Quash Subpoena October 28, 1975.	3
Assistant United States Attorney's Statement taken from Transcript of October 31, 1975.....	4
Order of Contempt and Denying Bail - October 31, 1975	5
Order on Motion for Bail Pending Appeal - November 14, 1975.....	6

DOCKET ENTRIES

- Oct. 20-75 USA -v- MICHAEL IANNACELLI, etc. -Filed Affdvt. and Notice of Motion-ret. 10-28-75, at 10:00 A.M., Rm. 506.
- Oct. 31-75 USA -v- MICHAEL IANNACELLI, etc. -Filed Notice of Appeal from the denial of his bail application by Pierce, J. m/n/: U.S. Atty., SDNY
- Oct. 31-75 USA -v- MICHAEL IANNACELLI, etc. - Filed Notice of Appeal from denial of the application to renew motion relating to a Grand Jury subpoena by Pierce, J. m/n: U.S. Atty., SDNY
- Nov. 3-75 IN RE: FRANCIS J. MILLOW; a witness before the grand jury -Filed Affdvt. with Notice of Motion-ret. 10-31-75, 2:30 P.M., in Rm. 506.
- Nov. 3-75 USA -v- MICHAEL IANNACELLI, etc. -Filed Affdvt. by Joseph Millow
- Oct. 31-75 IN RE: FRANCIS J. MILLOW-CONTEMPT PROCEEDING UNDER TITLE 28, U.S. Code Section 1826(a)-Filed Order dated 10-31-75--that Francis J. Millow be confined at MCC, N.Y..N.Y. until such time as he is willing to testify before said grand jury or until the expiration of the term of said grand jury, whichever first occurs, but said confinement in no event to exceed 18 months. Pierce, J.
- Oct. 31-75 IN RE: FRANCIS J. MILLOW-Contempt Proceeding-Filed Endorsed Memorandum on Order filed 10-31-75--Remanded. No bail, the Court finding as appeal herein would be frivolous. Pierce, J.
- Nov. 6-75 IN RE: FRANCIS J. MILLOW-Filed one brown envelope ordered sealed and placed in vault in Room 602.
- Nov. 10-75 IN RE: FRANCIS JOSEPH MILLOW, witness before a grand jury - Filed transcript of record of proceedings on 10-28-75, Pierce, J.
- Nov. 13-75 A witness before the grand jury filed Notice that the original record in the case has been certified and transmitted to the U.S. Court of Appeal for the Second Circuit on 11-13-75.

Nov. 13-75 Witness before the grand jury Filed Order dated
11-13-75 that the above described minutes 11-13-75
Room 1705 which pertain to the above captioned
matter may be disclosed to the second circuit
for disposing of appeal. Weinfield, J.

2 1974 over the signature of the county judge in Westchester
3 County. The Court hearing no further reason as to why
4 this proceeding here should not proceed and recognizing
5 that there is a strong public policy in the circuit of
6 not permitting disruption of grand jury proceedings absent
7 compelling reasons, the Court denies the order to vacate --
8 sought by the motion, that is, declines to issue the order
9 sought by the motion to vacate and quash the subpoena.

10 There is a further order of the Westchester
11 County Judge and it is dated November 8, 1974, so now,
12 counsel, I think you have sufficient record.

13 Is there anything further?

14 MR. VARRICHIO: Yes, your Honor. But I call
15 two additional cases to the Court's attention.

16 THE COURT: Counsel, you could go on all day.
17 I will hear argument once and I make my decision. Each
18 time I finish making a ruling if you are going to site another
19 couple of cases to me, I will be here all day trying to rule
20 on the case. You have your record, such as it is.

21 - - -
22
23
24
25

1 gp

2 Millow:

3 "I also want to advise you, Mr. Millow, that
4 you are the target of this investigation and that my
5 questions here today were based on electronic sur-
6 veillance, physical surveillance of your movements
7 in the past two years by the Federal Bureau of
8 Investigation and law-enforcement officials, witnesses
9 before this grand jury and things that you have made
10 to myself, Mr. Emory and Special Agent Douglas
11 Wilhelmy."

12 I think Mr. Millow misunderstood what I was
13 advising him. I merely advised him that his physical
14 movements had been under surveillance, not that his phone
15 had been tapped as apparently he told his defense attorney
16 for two years. That is not the case, your Honor. I am
17 familiar with all aspects of this investigation, your Honor.
18 There is no electronic surveillance that has been placed on
19 either a premises controlled by Mr. Millow or a telephone
20 which is registered to Mr. Millow or which Mr. Millow used
21 other than the ones that have been placed before your Honor.
22 That is the only electronic surveillance that I am aware of
23 in this case, and since I am the attorney who is going to
24 be propounding these questions, your Honor, before the
25 grand jury, I believe that that's dispositive.

are the district judge's decisions at this point.

Now, my decision on the question of bail is that I do find no novel or significant question of law and I believe that an appeal here is frivolous, counsellor, and I therefore remand the defendant with no bail to the custody of the Attorney General, as I previously announced, that is, until he is willing to testify before the grand jury or until the expiration of the term of the grand jury, whichever occurs first, and so long as that confinement does not exceed 18 months.

I don't think there is anything further. You have got your record, and your next step then is with the Court of Appeals.

MR. VARRICHIO: Thank you very much, your Honor.

Excuse me, the defendant wants to say something to me.

THE COURT: The record in this case is to be sealed.

MR. VARRICHIO: He wasn't significant, your Honor.

THE COURT: All right, Marshal, remand.

- - -

UNITED STATES COURT OF APPEALS

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the **fourteenth** day of **November**, one thousand nine hundred and **seventy-five**.

United States of America,

Plaintiff-Appellee,

v.

Michael Iannacelli, Joseph Millow,

Defendants,

Joseph Millow,

Defendant-Appellant.

It is hereby ordered that the motion made herein by counsel for the

Joseph Millow			
appellant	appellee	petitioner	respondent
XXXXXX	XXXXXX	XXXXXX	XXXXXX

~~XXXXXXXXXXXX~~ by notice of motion dated **November 11, 1975** for bail pending appeal

be and it hereby is ~~XXXXXX~~ granted denied.

It is further ordered that **appellant** shall file a brief and joint appendix on or before **November 21, 1975**; **appellee** shall file a brief on or before **November 28, 1975**; reply brief, if any, may be filed on the day before argument of appeal and the appeal shall be heard during the week of **December 1, 1975**.

It is further ordered that all parties may file their papers in typewritten form.

A. DANIEL FUSARO
Clerk
by **Edward J. Guardaro**
Senior Deputy Clerk

BEFORE: ~~HON. WILFRED FEINBERG~~

~~HON. MURRAY I. GURFEIN~~

~~HON. ELLSWORTH VAN GRAAPELANE~~
Circuit Judges

(6)